IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 679 of 2004

RAM RATAN RAMSANEHI
V/S
KARUNA RAM & ORS

Mr. NARENDRA MULCHANDANI, for the appellant / petitioner

Mr. ASHOK PATEL, for the respondent

Date of Order : 20.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The petitioner has filed application under Order 1 Rue 10 CPC claiming to be legatee under the Will executed by Prahalad Dass. Obviously, the petitioner could not be impleaded as party under Order 1 Rule 10. However, the learned trial Court has considered the application as if it was filed under Order 22 Rule 10A. In my view, Order 22 Rule 10A also has no application whatever as Order 22 Rule 10A only casts a duty on the pleader to communicate to Court about death of a party. However, the circumstances appeared to be covered by Order 22 Rule 10, as the petitioner claims under the Will of the deceased, and since the application has been filed within 90 days of the death, he could be brought on record as legal representative of Prahalad Dass. Learned trial Court has observed that earlier the right to file reply had been closed, and

Prahalad Dass was not treated to be necessary party, but then after going through the order-sheets, both the learned counsel agree that only right to contest, (जवाबदेही) of Prahalad Dass was closed, but then Prahalad Dass was never treated to be not a necessary party, rather Prahalad Dass had led evidence also, and on 18.11.2000 he had closed his evidence.

In these circumstances, the impugned order is set aside and the applicant Ramratan Ramsnehi is taken on record as legal representative of Prahalad Dass. Obviously he will not be entitled to have the proceedings reopened, and the learned trial Court may proceed with the case from the stage as it is, and decide the matter expeditiously.

The writ petition is, accordingly, allowed.

(N P GUPTA),J.

/tarun/